

To hear some of the debate, you'd think that the Obama Administration breached some longstanding barrier that left energy policy to the states and the market. If there ever was such a barrier, it disappeared over a century ago, with the onset of World War I. Ever since then, the federal government has been actively shaping energy production, distribution, and sale. We wouldn't have the oil industry or the coal industry we have today if the Feds hadn't been involved. That's not to mention all the money the Feds poured into building dams for hydroelectric power. Putting aside hydro, efforts to move the nation away from reliance solely on fossil fuels dates back sixty years when Congress decided to promote the use of nuclear power.

Simply listing federal statutes is enough to show how pervasively the Feds have been involved. Here is a timeline of major federal actions with a sentence about what each one did. I've included only a couple of the Supreme Court decisions that have helped shape the law, and none of the major administrative actions, such as the Federal Energy Regulatory Commission's (FERC's) deregulation of wholesale electricity prices and revamping of power grid management. I'm also excluding environmental regulations, which obviously have had a substantial impact on the energy sector. Nevertheless, the number and scope of federal interventions is overwhelming:

**1906.** Congress passes the Hepburn Act, which limited ownership of oil pipelines by oil producers.

**1911.** Supreme Court orders a break-up of Standard Oil, which controlled 90% of the oil market, thus restructuring the industry.

**1913.** The Revenue Act provides the first tax break specifically targeting the oil industry.

**1920.** Passage of the Mineral Leasing Act, governing access to federal lands by oil companies. Also, Congress created the Federal Power Commission to oversee and regulate hydropower projects.

**1935.** The Federal Power Act creates a federal regulatory scheme for interstate electricity transactions

**1926.** Congress passes the oil depletion allowance as an incentive for oil production.

**1938.** The Natural Gas Act creates a similar scheme for regulating the interstate natural gas system. The Public Utility Holding Company Act stringently limited such holding companies, which had grown explosively and acquired a large share of the nation's

electricity markets.

**1953.** The Submerged Lands Act and the Outer Continental Shelf Lands Act (amended in 1978) open the door for exploiting offshore oil.

**1954.** The Atomic Energy Act allows private ownership of nuclear reactors for the first time, subject to federal licensing.

**1957.** The Price-Anderson Act limits private liability for nuclear accidents, with the federal government taking over liability above a statutory cap. Fear of liability had stymied private use of nuclear power.

**1959.** President Eisenhower imposes import quotas on oil, protecting more expensive U.S. production from foreign competition.

**1970.** In response to high inflation, Congress enacts the Economic Stabilization Act under President Nixon, authorizing wage and price controls. Three laws dealing specifically with the oil industry were passed in 1973, 1975, and 1976, authorizing the President to impose allocations on the oil industry, in order to prevent major oil companies from taking advantage of price regulations at the expense of independent refiners. This regulatory scheme was dismantled starting in 1979 and completely terminated in 1981.

**1974.** The Energy Supply and Environmental Coordination Act authorizes the government to order power plants and major industrial sources to switch from oil and gas to coal. There was follow-up legislation in 1975 and 1978. Apparently the goal was to reduce pressure on oil prices due to the OPEC oil embargo.

**1975.** Congress passes the Energy Policy and Conservation Act. This law for the first time imposes fuel efficiency standards on vehicles. It also provided incentives for increased oil production.

**1976.** The Railroad Revitalization and Regulatory Reform Act begins deregulation of freight rates in the railroad industry, but creates specific protections to protect coal mine owners from rate increases by railroad companies servicing their mines.

**1978.** Congress passes the National Energy Conservation Act, which is really a package of laws governing particular industries. For instance, the National Gas Policy Act revamps regulation of gas production and allows more market competition. The package also included the Public Utility Regulatory Act, which opened the door for renewables and

cogeneration (combined heat and electricity).

**1979.** The Energy Security Act attempts to move the country away from oil, natural gas, and nuclear toward synthetic oil and gas, wind, and solar, while also trying to promote energy conservation.

**1980.** A windfall profits tax is imposed on excess domestic earnings by U.S. producers as a result of the price surge due to OPEC's control of international prices.

**1982.** The National Waste Terminal Storage Act establishes a framework for identifying a storage facility for spent nuclear fuel.

**1985.** The Low-Level Radioactive Waste Policy Amendments Act attempts to create incentives for development of additional sites for disposal of low-level waste (which naturally *no one* wants in *their* backyards). Unfortunately, the central pillar of the Act was struck down by the Supreme Court, and as a result no new sites were ever developed.

**1987.** Congress reforms the Mineral Leasing Act to require competitive bidding for oil and gas leases (although in practice there often isn't much competition).

**1990.** The Oil Pollution Compensation and Liability Act creates a compensation scheme for spill victims, capping liability by defendants except in case of gross negligence.

**1992.** The Energy Policy Act is another piece of omnibus legislation. It was intended to encourage modernization of the grid, increased use of tax relief for various oil and gas producers, deregulation of liquified and imported natural gas, tax credits for wind and biomass, and incentives for non-gasoline fueled vehicles. It also created a legal status for wholesale electricity generators, that gave independent generators nondiscriminatory access and pricing.

**2005.** Another Energy Policy Act, incorporating the Bush-Cheney emphasis on developing fossil fuel resources, and providing tax incentives for oil shale and tar sands along with renewables.

**2007.** The Energy Independence and Security Act provides additional incentives for renewables and tightens fuel efficiency standards for vehicles.

As you can see, there never was any golden age when the federal government kept its hands off energy policy. It's been an active player on a consistent basis from the time the country moved from gas lighting and horses to electricity and automobiles.

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Note: This version reflects some corrections and additions suggested by Steve Weissman at the Goldman School.